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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/034,369	12/28/2001	Deborah Chrisman	S0595.0078/P078	8707

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EXAMINER	
VAN DOREN, BETH	

ART UNIT	PAPER NUMBER
3623	

DATE MAILED: 02/09/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Advisory Action	Application No. 10/034,369	Applicant(s) CHRISMAN ET AL.	
	Examiner Beth Van Doren	Art Unit 3623	MW

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 19 January 2004 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

PERIOD FOR REPLY [check either a) or b)]

a) ☒ The period for reply expires 4 months from the mailing date of the final rejection.

b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection. ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1. ☐ A Notice of Appeal was filed on _____. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.

2. ☐ The proposed amendment(s) will not be entered because:

   (a) ☐ they raise new issues that would require further consideration and/or search (see NOTE below);

   (b) ☐ they raise the issue of new matter (see Note below);

   (c) ☐ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or

   (d) ☐ they present additional claims without canceling a corresponding number of finally rejected claims.

   NOTE: _____.

3. ☐ Applicant's reply has overcome the following rejection(s): _____.

4. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).

5. ☒ The a)☐ affidavit, b)☐ exhibit, or c)☒ request for reconsideration has been considered but does NOT place the application in condition for allowance because: *See attached sheet*.

6. ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.

7. ☒ For purposes of Appeal, the proposed amendment(s) a)☐ will not be entered or b)☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

   The status of the claim(s) is (or will be) as follows:

   Claim(s) allowed: _____.

   Claim(s) objected to: _____.

   Claim(s) rejected: *1-43*.

   Claim(s) withdrawn from consideration: _____.

8. ☐ The drawing correction filed on _____ is a)☐ approved or b)☐ disapproved by the Examiner.

9. ☐ Note the attached Information Disclosure Statement(s)(PTO-1449) Paper No(s). _____.

10. ☐ Other: _____

Advisory Action

This advisory action is in response to the communications received on 01/30/2004.

In the Request for Reconsideration, Application argues that (1) Certified Marketing Services, Inc. (www.certifiedmarketingservices.com) does not teach or suggest automatically determining the amount of labor required to perform the store activity using store information, product information, labor information, and labor requirements (i.e. there is no teaching of how the amount of labor is determined or what is used in making this determination), (2) the electronic data collection disclosed on pages 6 and 7 is for marketing purposes and not for a labor determination process and there is no suggestion that CMS is not merely a tool for collecting marketing data about potential customers, and (3) does not teach or suggest making a "fair share" determination, wherein "fair share" is not the same "fair share" generally used with respect to labor.

In response to argument (1) of the Applicant, Examiner respectfully disagrees. CMS does, in a mechanized fashion, determine labor requirements. Using the Internet and online data collection, CMS receives information such as labor information, labor requirements, store information, etc., and uses this information to determine labor required and transmit the determined requirements over the network. Based on the language of the claimed limitation, what the exact requirements of the term "automatically" are is not clear. Automatically, in its broadest reasonable interpretation, means routinely or in a mechanized manner. CMS does routinely determine the labor requirements by electronically collecting the same standard information from each customer, using this information to determine a program, and providing the customer with the service with online reporting. See at least page 1, sections 1 and 2, page 4,

sections 1 and 2, page 6, sections 2 and 3, page 7, sections 1-2, page 9, sections 1, 4, and 5, and page 13, sections 1 and 2. If there is something more specific meant or required by the term automatically, it should be recited in the claims.

Furthermore, as to Applicant's statement that CMS does no disclose how the amount of labor is determined, Examiner points out that the claims do not recite a specific manner (i.e. a formula, algorithm, etc.) in which the determination is made. Therefore, CMS's teachings, as discussed above, meet the broadest reasonable interpretation of the claims. As to the Applicant's statement that CMS does not teach what is used in making this determination, Examiner respectfully points out that there is no specific recitation in the claims as to how the explicitly recited information is used to determine the amount of labor (i.e. if it is used exclusively, if other information is included with explicitly recited information to make the determination, etc.). Therefore, CMS does use the received information of store information, information that relates to the product information, labor information, and labor requirements to determine the labor required (Examiner asserted a § 103 rejection above based on the term product information. Examiner asserts that the use of product information or information that relates to the product information does not change the basis or logic of the argument here presented).

In response to argument (2) of the Applicant, Examiner respectfully disagrees and point out that pages 6 and 7 disclose a quote request form, as shown in section 2 wherein CMS states "If you would like a quote for your requested service(s), please add the following information". The information that follows in sections 3 and 4 of page 6 and sections 1-4 of page 7 includes specific information needed to generate quotes and requirements for a business. Therefore, the

information electronically obtained is not merely marketing data, but rather gathered for the specific purpose of generating quotes and requirements for the specific business.

In response to argument (3) of the Applicant, it is noted that the feature upon which applicant relies (i.e., the meaning of the term "fair share" which is different than the one generally used in labor) is not recited in the rejected claims. Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993). Examiner points out that, in the limitations of the claims, there is no specific way "fair share" is used for determinations and no specific meaning for "fair share" beyond the known term of art. Therefore, Examiner maintains the § 103 rejections.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Beth Van Doren whose telephone number is (703) 305-3882. The examiner can normally be reached on M-F, 8:30-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tariq Hafiz can be reached on (703) 305-9643. The fax phone number for the organization where this application or proceeding is assigned is (703) 305-7687.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1113.

bvd
February 3, 2004

Romain Jeanty
Patent Examiner
Art Unit 3623